Petition

81-892

Office-Supreme Court, U.S.
FILED
NOV 12 1981
ALEXANDER L. STEVAS,
CLERK

NO.

In The
Supreme Court of the United States

OCTOBER TERM, 1981

JAMES C. GOINS, JAMES H. RODGERS
LEROY McCLELLAND, EDMOND NOTARANGELO, et al.,
Petitioners,

v.

BETHLEHEM STEEL CORPORATION, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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FOR THE FOURTH CIRCUIT

The Petitioners, JAMES C. GOINS, JAMES H. RODGERS, LEROY McCLELLAND, EDMOND NOTARANGELO, et al, respectfully pray that a Write of Certiorari issue to review the Opinion of the United States Court of Appeals for the Fourth Circuit

affirming District Court's judgment dismissing their complaint seeking to set aside a Consent Decree insofar as it applied to Bethlehem Steel Corporation, Sparrows Point, Maryland, plant. The Consent Decree was entered into between the United States of America, the United Steelworkers of America, Bethlehem Steel Corporation and eight other steel companies on April 12, 1974. The opinion of the Court of Appeals was decided on August 13, 1981.

QUESTIONS PRESENTED

1. Did the Court of Appeals err when it affirmed the holding of the Maryland District Court that the doctrine of comity barred the Petitioner's Complaint?

2. Did the Court of Appeals err when it found in Allegheny-Ludlum [1/] had personal jurisdiction over each of the Defendants, and that no more is required to make the judgment of the Northern Alabama District Court conclusive, subject to attack only by motion in that Court or by appeal to the United States Court of Appeals for the Fifth District?

1/ United States v. Allegheny-Ludlum Industries, Inc., 63 F.R.D. 1 (N.D. Ala. 1974) aff'd, 517 F.2d 826 (5th Cir. 1975), cert. denied, 425 U.S. 944 (1976).

LIST OF PARTIES

James C. Goins, James H. Rodgers, Leroy McClelland, Edmond Notarangelo, Individually and on behalf of all others similarly situated,

Petitioners

v.

Bethlehem Steel Corporation; Armco Corporation; United States of America (Secretary of Labor); United States of America (Equal Employment Opportunity Commission); Allegheny Ludlum Industries, Inc.; Jones & Laughlin Steel Corp.; National Steel Corporation; Republic Steel Corp.; United States Steel Corp.; Wheeling Pittsburgh Steel Corp.; Youngstown Sheet & Tube Company; United Steelworkers of America, AFL-CIO-CLC,

Respondents

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The Opinion of the Court of Appeals (Appendix B herein) is reported at 657 F.2d 62 (4th Cir. 1981). The Memorandum and Order of the District Court for the District of Maryland, Case No. M-77-1905 (D. Md., July 31, 1980) is not yet reported.

JURISDICTION

The Opinion of the Court of Appeals was entered on August 13, 1981. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1254(1).

UNITED STATES CONSTITUTIONAL PROVISION, FEDERAL RULE OF CIVL PROCEDURE AND STATUTE INVOLVED

AMENDMENT V - UNITED STATES CONSTITUTION

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the

Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb;nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. 29 U.S.C. Section 185 Suits by and against labor organizations (a) Venue, amount, and citizenship. Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without

respect to the amount in controversy or without regard to the citizenship of the parties.

Federal Rules of Civil Procedure Rule 19. Joinder of Persons Needed for Just Adjudication

(a) Persons to be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a

substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a part. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

(b) Determination by Court Whenever not Feasible. If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus

regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for non-joinder.

STATEMENT OF THE CASE

A. Nature of the Proceedings Below

On November 16, 1977 Petitioners James C. Goins, James H. Rodgers, Leroy McClelland, Edmond Notarangelo, individually and on behalf of all other similarly situated (hereinafter called Goins, et al), filed and served on or about November 17, 1977 a Complaint on Defendants-Respondents, Bethlehem Steel Corporation (hereinafter called Bethlehem Steel), Armco Steel Corporation, Allegheny-Ludlum Industries, Inc., Jones & Laughlin Steel Corporation, National Steel Corporation, Republic Steel Corporation, United States Steel Corporation, Wheeling-Pittsburgh Steel Corporation, Youngstown Sheet & Tube Company (hereinafter collectively called the Non-Bethlehem Steel companies). The Complaint was also served on the United States of America (Secretary of Labor) and the United States of America

(Equal Employment Opportunity Commission), the United States Steelworkers of America (hereinafter called United Steelworkers or the Internal Union) on or about November 17, 1977.

The Complaint involved an equity action arising pursuant to 29 U.S.C. Sec. 185 and Article III Sec. 2 as well as Amendment V of the United States Constitution. Accordingly, jurisdiction was based on 28 U.S.C. Sub-Sec. 1331, 1346 and 2201, et seq. Jurisdiction is also based on Sec. 301 of the Labor Management Relations Act of 1947, Sec. 2000e, et seq.

The Plaintiffs-Petitioners Goins, Rodgers, McClelland and Edmond Notarangelo and the class they represent were all employed by Bethlehem Steel at its Sparrows Point, Maryland plant. They were all members of the International Union and either Local Union 2609 or

2610. Their complaint pertained to the Consent Decree (Consent Decree I) agreed to by all the Defendants-Respondents and entered in United States v. Allegheny-Ludlum Industries, Inc., 63 F.R.D. 1 (N.D. Ala. 1974), (Pointer, J.) aff'd., 517 F. 2d 826 (5th Cir., 1975), cert. denied, 425 U.S. 944 (1976). A gravamen of the Complaint was that Consent Decree I was improperly applied to the employees of Bethlehem Steel at its Sparrows Point plant, because the Decree involves drastic revision of the "Seniority clause" of the Defendants-Respondents collective bargaining agreement, adversely affecting the Plaintiffs-Petitioners, and which was effected without the International Union first submitting the proposed agreement which lead to Consent Decree I to its Steel Industry Conference (S.I.C.). The S.I.C. consists of local union presidents including those of Local 2609 and 2610.

Thus the Complaint asserted that the members of the S.I.C. were necessary parties to Consent Decree I. Further, the Complaint asserted that the circumstances of the Sparrows Point plant were such that minorities had had ample opportunities to transfer from departments and units to other departments and units so that Consent Decree I had no rational relationship to the correction of racial wrongs caused by "seniority" applications at the Sparrows Point plant.

Moreover, the Complaint also asserted that Consent Decree I is inequitable and was entered into under a mistake of law on the erroneous assumption that the pre-existing unit seniority system at Bethlehem Steel's Sparrows Point plant was not a bona bide seniority system within the meaning of Title VII of the Civil Rights Act of 1964.

Finally, the Complaint asserted that

the International Union violated its duty of fair representation by failing to submit the agreement which became Consent Decree I to the Local Union presidents who were members of the Steel Industries Conference (S.I.C.) and by having a conflict of interest in representing the Plaintiffs-Petitioners.

Thereafter, in January and February of 1978, the Defendants-Respondents filed Motions to Dismiss on the grounds that: Principles of comity barred the suit; there is no proprietary interest in "seniority rights" which gives rise to a right to notice and a hearing under the Due Process Clause; there is no governmental action which would give rise to due process guarantees; there was no breach of duty of fair representation by the International Union; and the Statute of Limitations bars the suit. Furthermore, the non-Bethlehem Defendants-

Respondents took the position that the District Court lacked personal jurisdiction over them.

On March 9, 1978, the Plaintiffs-Petitioners filed an Opposition Memorandum to the Motions to Dismiss and on March 15, 1978, a status conference was held before United States District Court Judge James R. Miller, Jr.

Thereafter, on March 29, 1978 as a result of the status conference, the Plaintiffs-Petitioners filed a Supplemental Memorandum, and, in April of 1978 the Defendants-Respondents responded. Thereupon, on April 25, 1978 the Plaintiffs-Petitioners filed their Third Opposition Memorandum to the various Motions of Defendants-Respondents to Dismiss.

On August 20 and 22, 1979 Defendants-Respondents United Steelworkers, United States of America and Non-Bethlehem Steel

companies filed Supplemental Memoranda in support of their Motions to Dismiss, and on September 14, 1979 the Plaintiff responded thereto.

Thereafter, on November 16, 1979 there was a hearing on the Motions to Dismiss before Judge Miller, who issued a Memorandum and Order on July 31, 1980, granting the Defendants-Respondents Motions to Dismiss on the grounds of the application of the principles of comity and on the merits of the Complaint and also finding that Counts II, III and V are time-barred by the Maryland Statute of Limitations. (Appendix A).

On August 6, 1980 a Judgment was entered in favor of the Defendants-Respondents against the Plaintiffs-Petitioners, with prejudice. Thereafter, on August 22, 1980 the Plaintiffs-Petitioners filed their Notice of Appeal. On August 13, 1981 the United States

Court of Appeals for the Fourth Circuit affirmed the judgment of the Maryland District Court (Appendix B).

B. Statement of the Facts

Until April 12, 1974 the seniority status of a member of the United Steelworkers at the Sparrows Point plant of the Bethlehem Steel Corporation was computed on the basis of unit seniority, which is the worker's length of service within a particular unit. This sytem appears in all collective bargaining agreements made between Plaintiffs and Bethlehem Steel prior to August of 1974. Up to 1974, each of the Plaintiffs and the Class they represent developed seniority status on a unit seniority basis. Unit seniority was used to determine, among other purposes, the order of layoffs and recalls, and promotions to higher rated jobs within a unit.

The Sparrows Point plant had as early as 1946 taken action to equalize employment opportunities between men and women. Further, due to Local Union 2609's insistence, the company, in 1956, agreed to allow black employees to freely transfer between labor and production units, thus dispensing with any distinction between race and relation to transfers.

In January of 1973 the Secretary of Labor of the United States, pursuant to Executive Order 11246, ordered Defendant Bethlehem Steel to implement a plan where black employees, when found to be part of the "affected class", were entitled to free transferability to exercise plant continuous service, rather than unit service as a measurement of their seniority and as a measurement of their competitor's seniority on competing for a particular position. However, where an "affected class" employee was not involved

in an employment decision, unit rather than plant seniority was the measuring device used.

On April 12, 1974, suit was filed by the United States of America, et al., in the U.S. District Court for the Northern District of Alabama, Southern Division, against Bethlehem Steel, the Non-Bethlehem Steel Companies, and the United Steelworkers International Union, alleging racial discrimination in the steel industry. The United States, the steel companies, and the United Steelworkers negotiated a settlement of the case, and a consent decree was entered into by the parties. The consent decree (Consent Decree I) implemented a seniority system of plant continuous service rather than unit continuous service. The seniority agreement which became Consent Decree I the same day was not ratified by the Steel Industry Conference, which consists

of the presidents of the local unions of the United Steelworkers. This was in violation of resolution 24 which provides that the S.I.C. shall have authority to reject or ratify collective bargaining agreements.

The seniority provisions of the decree were contrary to the seniority provision, which was based on unit seniority of the collective bargaining agreement then in existence (the Agreement dated August 1, 1971) between Bethlehem Steel and the United Steelworkers. In their belief that they were legally and absolutely bound by the decree, the local union presidents, who were members of the S.I.C., ratified the incorporation of the terms of the decree into the August 1, 1974 and August 1, 1977 collective bargaining agreements between Bethlehem Steel and the United Steelworkers. Since the passage of the decree in 1974, the steel

industry, particularly the Sparrows Point Plant of Bethlehem Steel, has experienced layoffs. Pursuant to the decree, plant rather than unit seniority governs in determining demotions, layoffs and other reductions in forces as well as recalls from layoffs. It also now has an impact on promotions. Members of the Class herein have lost jobs and pay as a result of the decree.

The decree is under the continuing jurisdiction of the U.S. District Court for the Northern District of Alabama, Southern Division for the purpose of issuing any additional orders or decrees needed to effectuate, clarify, or enforce the full purpose and intent of the decree. The decree was entered for a period of five years. It provides, in pertinent part, that "Anytime after the conclusion of five (5) years from the date of this Decree, any party may move to dissolve

this Decree in whole or in part". No party has so moved and, accordingly, the decree is still in full force and effect.

REASONS FOR GRANTING THE WRIT

1. The Court of Appeals affirmance of the District Court's Ruling that Petitioners' action is barred under the principles of comity is in conflict with decisions of other Courts of Appeals.

The basis of the Petitioners' suit and the class they represent is that their fundamental rights have been ignored in the following ways which render Consent Decree I invalid and void ab initio as it has been and is being applied to them:

A. Due process requires that the persons subject to a judicial mandate be given an effective opportunity to be heard prior to the operation of a Decree. Appellants through their elected representatives, the Local Union

presidents who were members of the S.I.C., were not given this opportunity.

B. The Labor Management Relations Act of 1947 requires that a Union fairly represent its members. Respondent United Steelworkers breached this duty because it acted arbitrarily in not following its own ratification of collective bargaining procedures in negotiating a new seniority agreement which immediately became Consent Decree I. It also breached this duty because its interests were in direct conflict with the Petitioners'.

C. The coercive powers granted courts under Article III of the Constitution of the United States of America must be exercised only to the extent necessary to effectuate the Constitution and the laws thereunder. Consent Decree I over which the Petitioners grieve bears no rational basis to the wrong it purports to remedy at the Sparrows Point plant of

Respondent Bethlehem Steel and is therefore in contradiction to the laws of the United States insofar as it has been and is being applied to the Petitioners.

The lawsuit out of which Consent Decree I arose, United States of America and the Equal Employment Opportunity Commission v. Allegheny Ludlum Industries, Inc., et al., 63 F.R.D. 1 (N.D. Ala. 1974), (Pointer, J.) aff'd, 517 F.2d 826 (5th Cir. 1975) involved enforcement of the Equal Employment Opportunity Act (Title VII of the Civil Rights Act of 1964) against the nine steel companies which are Respondents in the instant case.

United States District Judge Miller, in his Memorandum and Order in our case, defined "comity" at page four as:

> Comity is a doctrine under which judicial discretion is utilized, in appropriate circumstances, to decline

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United States District Judge Miller, in his Memorandum and Order in our case, defined "comity" at page four as:

> Comity is a doctrine under which judicial discretion is utilized, in appropriate circumstances, to decline to exercise jurisdiction to adjudicate a dispute. Appropriate use of the

> principles of comity serves to avoid the entry of conflicting and inconsistent judicial decisions by different courts having the same parties or issues before each of them. Additionally, comity serves to conserve judicial resources by avoiding the duplication involved in multiple courts considering the same or similar matters. In addition to achieving the above ends, correct exercise of the doctrine results in a display of harmonious respect among courts of equal rank.

This definition is somewhat broader than that in Great Northern Railway Co. v. National Railroad Adjustment Board, 422 F.2d 1187, 1193 (7th Cir. 1970) which reads:

> The comity doctrine. . .requires that when two identical actions are filed in courts of concurrent jurisdiction, the one which first acquired jurisdiction should be the one to try the lawsuit. The purposes of the rule are to avoid unnecessary burdening courts and to avoid possible embarrassment from conflicting

> results. Technically, the concept of comity has no application in cases like the instant one in which the two pending suits involved different parties, different causes of action and different issues. (Emphasis, as added in Robertson v. Department of Defense, 402 F. Supp. 1342 (D.C. 1975).

Whatever definition is used, it is clear that the doctrine of "comity" does not apply. The identity of parties is absent since none of the Petitioner or their representatives, the S.I.C. members, were named in the Alabama suit. Further, there are few identical facts and no identical legal issues at bar since Consent Decree I was based on Equal Employment Opportunity enforcement while the instant case is based on redress for individual due process rights. Petitioners in the instant case strongly urge the Court to grant them access so that issues which have not been litigated

previously in the Northern District of Alabama may be addressed. See generally, Robertson v. Department of Defense, supra at 1346.

Further, Judge Pointer in U.S. v. Allegheny Ludlum Industries, Inc., et al., supra, expressly insulated Consent Decree I from constituting res judicata as to persons such as the Petitioners. Thus, the opinion expressly allows suits to be brought by private individuals who could seek different or event inconsistent relief from that provided in the Consent Decrees are not res judicata as to any private individual.

The Complaint in our case is not concerned with securing systemic relief. Instead, the Petitioners' position is that Consent Decree I is invalid as to them because they were denied an opportunity to participate or be heard as they were entitled to be, through their

representatives. Petitioners have thus been deprived of their property interest and a collective bargaining agreement on the subject of "seniority", without due process of law.

Judge Pointer confirmed, in his Memorandum and Opinion in U.S. v. Allegheny Ludlum Industries, Inc., Civil No. 74-P-033-S (N.D. Ala. March 21, 1978) that persons, such as the Petitioners herein, not parties to the litigation out of which Consent Decree I arose, would not be prevented from their opportunity to seek other or even inconsistent relief in a particular employment situation. In that Memorandum and Opinion he stated, in pertinent part:

> "And yet. . .as extensive quotations from earlier opinions have indicated. . .neither this Court nor the Fifth Circuit had anticipated that persons not parties to this litigation would be prevented from their opportunity to seek other or inconsistent

> relief in the context of a particular employment situation. Certainly it was - and is - the intent of this Court that persons like Blevins be able to present their claims of discrimination in a convenient forum". (Emphasis supplied).

Moreover, Judge Pointer's later decision of December 14, 1978, which vacated his order of March 21, 1978, in the same case, specifically stated that "given appropriate circumstances, . . .courts (other than the Consent Decree Court) might decide to exercise their jurisdiction. . .(T)his Court has noted in its memorandum of March 21, 1978 - a position which it still affirms -that the consent decrees do not necessarily bar all related litigation in other forums". This position taken by the Court is one of four reasons behind Judge Pointer's decision to vacate his order and neither amend Consent Decree I nor conduct an evidentiary hearing. He thus declined to

hear the Blevins case, affirming his belief that the more convenient forums would be the appropriate courts to hear related litigation in this and other appropriate circumstances.

Respondents have continually pointed to page 9 of Judge Pointer's Memorandum of March 21, 1978, in which Judge Pointer states that to the extent that Blevins seeks a ruling that the Consent Decrees are void as respects his plant, his claim is barred in other courts, as that was the situation in Martini v. Republic Steel Corp., 532 F.2d 1079 (6th Cir. 1976). Judge Pointer, however, emphasized that Blevins' claim could be barred only if Blevins was asserting the same claim which was made in Martini. In fact, the Blevins complaint raised no such claim, thus this portion of Judge Pointer's Memorandum has no precedential value to our case. Even so, the situa-

tion in Martini is not reflected in the present case. In Martini, the claim that the Consent Decree was entered without subject matter jurisdiction was rejected, and comity was held to apply because the same issues raised by Martini were concurrently before the Fifth Circuit. The instant case raises a different issue, lack of in personam jurisdiction, and this issue is not before any other federal court. Thus, the present case cannot be barred under Martini and hence was not meant to be barred by Judge Pointer.

Finally, it has been recognized that a lack of personal jurisdiction will render an initial judgment void, such that it may be challenged by collateral attack in a proceeding in any court where that judgment's validity comes into issue. Graciette v. Star Guidance, Inc., 66 F.R.D. 424 (SDNY 1975).

Petitioners instituted an independent action in the U.S. District Court for the District of Maryland pursuant to the Federal Rules of Civil Procedure, Rule 60(b)(5) because Sparrows Point, Maryland is the situs of the implementation of Consent Decree I and where all the Petitioners reside.

2. The United Steelworkers breached its duty of fair representation under Section 301 of the Labor Management Relations Act of 1947 by not submitting the Agreement on Seniority which became Consent Decree I to the S.I.C. for Ratification before the Union entered into the Decree.

The District Court and the Court of Appeals rejected the Petitioners' Argument that Respondent United Steelworkers did not have the authority by itself to bind the Petitioners to Consent Decree I. Moreover, the District Court

rejected Petitioners' contention that the provisions of Consent Decree I should have been submitted to the S.I.C. for approval prior to the approval of the Consent Decrees by the International. However, these findings are clearly erroneous. As indicated in the District Court's Memorandum and Order, "Resolution 24" (Appendix A at page 17) delegated the International's authority to ratify or reject proposed collective bargaining agreements to the S.I.C. Accordingly, the International no longer possessed the authority to agree to a consent decree which changed any aspect of an existing collective bargaining agreement.

The District Court also rejects Petitioners' argument that the S.I.C.'s approval of the provisions of Consent Decree I and its incorporation of them into its next collective bargaining agreement, which is of no importance.

This is because the adoption of the Consent Decree amounted to a "Shotgun Marriage" as a result of which the S.I.C. had no choice but to adopt the judicially mandated provisions which had already been agreed to by the International.

In rejecting the Petitioners' argument, the District Court raised, without actually deciding, the question of whether the Petitioners have standing to object to the International's failure to refer the matter for prior S.I.C. approval. The Petitioners respond to this question by first asserting that they are entitled to be represented by the Local Union presidents who are members of the S.I.C. in the ratification process over a change in the seniority provisions of their collective bargaining agreement. They were not so represented in the circumstances of this case. It is also clear that an individual may sue the

Union of which he or she is a member based on allegations of breach of the duty of fair representation. Vaca v. Sipes, 368 U.S. 171 (1967). Accordingly, they have standing in a lawsuit to object to the International's failure to permit their authorized representatives to perform the ratification representation function as authorized under "Resolution 24" (Appendix C).

Secondly, the District Court takes the position that even if the failure to submit the Consent Decree provision to the S.I.C. amounted to a violation of internal union procedures, it does not lessen the inherent authority of the International to bind the union into such an agreement. Without taking any testimony as to how "Resolution 24" and the United Steelworkers' Constitution should be interpreted or how long it would take to convene the S.I.C. to

secure ratification, the District Court assumes the inherent authority of the International to bind the United Steelworkers into such an agreement. Judge Sam C. Pointer, Jr. pointed out in his Memorandum of Opinion, dated March 21, 1978, in U.S. v. Allegheny Ludlum Industries, Inc., at page 3:

> The essence of Consent Decree I is a collective bargaining agreement between the union and the companies. Its basic nature is not changed by reason of the fact that negotiations were conducted with the objective of avoiding potential claims by federal government agencies of discrimination and that the agreement became embodied, in order to effectuate and implement the release of such claims, in a court decree.

Clearly, Consent Decree I, involving the subject of "seniority" is in essence a collective bargaining agreement requiring proper union bargaining procedures to be

followed. Although Article XVII of the International Constitution provides that "(t)he International Union shall be the contracting party in all collective bargaining agreements...", that provision must be read with the requirements of Resolution 24 (Appendix C) entitled "Bargaining Procedures". Resolution 24 gives the S.I.C. authority to reject or ratify contracts. These two provisions can be and should be read together and harmonized. While the International may initiate and conduct negotiations and its officers will ultimately sign any collective bargaining agreement, it is not inconsistent for the S.I.C. to have the authority to reject or ratify any collective bargaining agreement which the International has negotiated, before the International's officers sign such an agreement. Thus, the S.I.C. has an

essential role to play in the collective bargaining process, which was ignored in the negotiatons over "seniority" which immediately became part of Consent Decree I.

Thirdly, the District Court finds that Resolution 24 does not purport to delegate the inherent power of the International, through its officers, to approve a consent decree which has some effect on the collective bargaining agreement. However, Petitioners respond that, as the foregoing quotation from Judge Pointer's March 21, 1978 Opinion indicates, the International did not simply approve a consent decree, it first negotiated a collective bargaining agreement which became Consent Decree I ("became embodied...in a court decree"). Accordingly, the International was required to follow its own negotiation procedural rules, which it failed to do, thereby

causing a fatal defect. Moreover, Consent Decree I did not simply have "some" effect on the collateral bargaining agreement, it had a "fundamental" effect on the agreement profoundly affecting the working lives of its members at Bethlehem Steel's Sparrows Point plant.[1/] Further, even assuming that substantial liability arose after litigation in the event the S.I.C. rejected the seniority agreement which became Consent Decree I, the initial cost would be borne by the International, but the ultimate cost would be passed onto the members of the S.I.C. as well as all

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1/ Interestingly enough, there was no need for the parties to enter into the seniority agreement which became Consent Decree I, because the prior unit seniority system did not produce unlawful discrimination according to United States v. T.I.M.E. - D.C., 431 U.S. 324 (1977).

the other members of the International, in the form of increased per capita tax and special assessments to restore the International Union's treasury. Thus, the S.I.C. also had an interest not only in the daily applications of a changed seniority system, but also in the possible financial impact of not agreeing to the proposed changes in seniority in terms of liability because of alleged unlawful discrimination.

Fourthly, the District Court implies the tacit approval of the S.I.C. because it has not moved to set aside Consent Decree I. Even if such approval exists, which it manifestly does not, it is too slender a reed on which to put any judicial weight. The function of the S.I.C. is to reject or ratify collective bargaining agreements according to Resolution 24, not to initiate litigation. It is sufficient that the

members, Petitioners herein, who are supposed to be represented by the S.I.C. in these matters, have expressed their strong dissatisfaction with Consent Decree I, thereby indicating rejection thereof.

Fifthly, the District Court takes the position that even assuming that approval of the S.I.C. was necessary before the International approved the Consent Decree, the locals did not need to be joined in a suit in Alabama, because a majority vote of the S.I.C., and not that of each individual local, would have been necessary to approve the decree. The Court cited United States v. T.I.M.E. - D.C., 517 F.2d 299, 310 (5th Cir. 1975) and United States v. Navajo Freight Lines, 525 F.2d 1318, 1322 (9th Cir. 1975) in support of this position. Both of these decisions which apply Rule 19 of the Federal Rules of Civil Procedure are

readily distinguishable from the circumstances of our case.

The thrust of the Petitioners' complaint is that members of the S.I.C. did not have the opportunity to accept or reject the collective bargaining agreement on seniority which immediately became Consent Decree I. The Petitioners also take the position that the members of the S.I.C. were indispensible parties, pursuant to Rule 19 of the Federal Rules of Civil Procedure, to the April 12, 1974 lawsuit brought by the United States against the Respondents in United States v. Allegheny-Ludlum Industries, Inc., 63 F.R.D. 1 (N.D. Ala. 1974), (Pointer, J.). Members of the S.I.C. generally consist of local union presidents in the steel industry. They include the presidents of Local Unions 2609 and 2610 of Baltimore, Maryland. Petitioners are members of either Local 2609 or Local 2610.

While it is true that a majority vote of the S.I.C. would have been necessary to approve the seniority agreement which immediately became Consent Decree I, two of the members of the S.I.C. were presidents of Locals 2609 and 2610 who represented the Petitioners' interests in the collective bargaining process. Further, the fact that these two individuals could be outvoted is only a small factor in determining whether the S.I.C. should have been made a party to the Alabama case. Other more important factors are whether the local union presidents who are S.I.C. members could "feasibly" have been joined in the suit or whether they are scattered across the country so that the District Court could conclude it is not feasible to join them.

Most significant is the question of whether the failure to join the members of the S.I.C. impairs or impedes the

ability of those persons the S.I.C. represents, the Petitioners herein, to protect their rights. Also significant is whether the International Union's conduct in this and other litigation plainly suggests that neither the S.I.C. nor the persons it represents can complain that their ability to protect themselves has been impaired by their non-joinder.

Thus, in United States vs. T.I.M.E.-D.C., supra, the trial court found (apparently based on admissible evidence) that it was not feasible to join local unions because they are scattered across the country. In United States v. Navajo Freight Lines, supra, the Court found that neither the Local Unions' nor their members' ability to protect their rights was impaired or impeded by non-joinder. The Court also found that the International Union (Teamsters) "is concerned with

seniority and discrimination, its resources are ample, and its conduct in this and other litigation plainly suggests that neither the locals nor their members can complain that their ability to protect themselves has been impaired by their non-joinder."

The instant case is clearly distinguishable from these cases.

We submit that the facts demonstrate in our case that the ability of the S.I.C. and the persons it represents, including the Petitioners, to protect their unit seniority interests was clearly impaired by non-joinder. Moreover, we also submit that the conduct of the United Steelworkers in the Alabama litigation which was ended by Consent Decree I plainly demonstrates that the S.I.C.'s and its constituents' ability to protect their seniority interests has been impaired - indeed, destroyed - by

their non-joinder.

The S.I.C. membership were indispensible parties to the prior collective bargaining agreement over seniority and to the Alabama litigation, and Consent Decree I is invalid insofar as it applies to the Petitioners for failure to join the S.I.C.

In the steel industry Respondent United Steelworkers has been delegated the privilege of negotiation within the strictures of its Constitution, By-Laws, resolutions and Federal Law. Section 3 of Article XVII of the United Steelworker's Constitution provides:

> The International Union and the Local Union to which the member belongs shall act exclusively as the member's agent to represent the member in presentation, maintenance, adjustment, and settlement of all grievances and other matters relating to terms and conditions of employment or arising

> out of the employer-employee relationship. (Emphasis added).

International Union are representative forms, not oligarchies or monarchies. Aikens v. Abel, 373 F.Supp. 425, 429, 430 (1974). Aikens, at 429, 430 states that the S.I.C. was created in 1966 by Resolution 24 of the International's convention. As mentioned above, Resolution 24 delegated to the S.I.C. the authority to reject or ratify contracts. Its members consist of Local Union presidents from plants in the basic steel industry who are elected by the United Steelworkers rank and file, which includes Petitioners herein. By entering into the seniority agreement which immediately became Consent Decree I without the participation of the S.I.C., the United Steelworkers acted arbitrarily in breach of its duty of fair representation. Vaca v. Sipes, 386 U.S. 171, 190,

64 LRRM 2369, 2376 (1967); Griffin v. U.A.W., 469 F.2d 181, 81 LRRM 2485, (4th Cir. 1972); Humphrey v. Moore, 375 U.S. 335 (1961), Hines v. Anchor Motor Freight, Inc., 96 S.Ct. 1048 (1976).

Further, in Christopher v. Safeway Stores, Inc., 476 F.Supp. 950 (E.D. Tex, September 18, 1979), a union agreed with the employer to change the collective bargaining agreement so as to provide for city-wide seniority instead of area-wide seniority without giving notice of the change and an opportunity to vote on it to the union membership. The internal constitution of the union provided that all major propositions in the collective bargaining agreement must be approved by the membership. The court held that the union, in failing to submit the proposed changes to the membership for approval, violated the Labor-Management Reporting

and Disclosure Act and gave plaintiffs a cause of action against the union for breach of their fiduciary duty to adequately represent all employees. The court stated:

> Plaintiffs were deprived of a valuable property right in the form of seniority rights when the union agreed to change the 1976-1978 collective bargaining agreement so as to provide for city-wide seniority, without permitting the membership of the union to vote on such changes... As a matter of law, seniority is a major proposition affecting all members, and it is perhaps the most important right secured to union members by the collective bargaining agreement.

476 F.Supp. at 954. In the instant case, the constitution of the International Union requires that the Local Union presidents ratify collective bargaining agreements. The International Union should have but did not give the Local

Union representatives a notice or hearing of the terms of the consent decree. Thus, as in Christopher, the United Steelworkers breached its fiduciary duty to adequately represent its members by failing to submit to the Local Union presidents the terms of the consent decree.

The District Court, in footnote 16 on page 11 of the July 31, 1980 Memorandum and Order, distinguishes Christopher v. Safeway Stores, Inc., supra, on the ground that the union's constitution in that case did not allow the International to enter into a collective bargaining agreement until the membership of the union had approved all major propositions filed therein. The Court's distinction is not valid, because the principal of Christopher is directly applicable to our case. That principal is that a union

breaches its duty of fair representation by failing to follow its own ratification procedures for collective bargaining agreements, which is exactly what happened in the instant case.

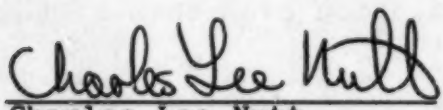
Thus, contrary to the ruling of the Court of Appeals in the instant case, the fact that the Court had personal jurisdiction over each of the Defendants in that case, and this, is not conclusive. Such personal jurisdiction is not conclusive, because negotiation over "seniority", which is what Consent Decree I involved, is a subject of collective bargaining, which requires ratification by the S.I.C. of the Respondent United Steelworkers. Since that ratification procedure was not followed by Respondent United Steelworkers in reaching the agreement which immediately became Consent Decree I, the

Petitioners are not bound by Consent Decree I.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,



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APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JAMES C. GOINS, et al *

vs. * CIVIL ACTION NO. M-77-1905

BETHLEHEM STEEL CORP., et al *

* * * * * * * *

MEMORANDUM AND ORDER

The case comes before the Court on defendants' motion to dismiss the complaint. The plaintiffs are four individuals employed at Bethlehem Steel's Sparrows Point Plant. They have sued on behalf of themselves and of a putative class of similarly situated union member employees at the Sparrows Point Plant. The defendants are Bethlehem Steel Corporation, seven other steel manufacturers, (hereinafter called the "Non-Bethlehem Steel Companies"), the United Steelworkers of America (hereinafter called the "International") and the United States of America. All

defendants were signatories to the consent decree (Consent Decree I) entered in United States vs. Allegheny-Ludlum Industries, Inc.,[1/] 63 F.R.D. 1 (N.D. Ala. 1974), (Pointer J.) aff'd, 517 F.2d 826 (5th Cir. 1975), cert. denied, 425 U.S. 944 (1976); 546 F.2d 1249 (5th Cir. 1977) (affirming restriction on intervention); 553 F.2d 451 (5th Cir. 1977) (affirming, after Teamsters, denial of intervention seeking to vacate Consent Decree I), cert. denied, 435 U.S. 914 (1978); 558 F.2d 742 (5th Cir. 1977) (standards for award of attorneys' fees against intervenors); 568 F.2d 1073 (5th Cir. 1978) (reconsideration of standards for award of attorneys' fees).

[1/] The original consent decree is not published in the federal reporter system. A copy of the consent decree is attached to Bethlehem Steel's Motion to Dismiss (Paper 7).

The five count complaint constitutes a collateral attack on Consent Decree I. Counts I - IV allege various reasons why the Consent Decree entered by Judge Pointer should be rendered void ab initio by this Court. Count V alleges that the particular circumstances applicable to Sparrows Point make the consent decree irrational in its application to conditions at Sparrows Point and that it is void as it is applied to plaintiffs. The plaintiffs are not attacking the consent decree on the ground that it constitutes reverse discrimination. See, United Steelworkers v. Weber, 443 U.S. 193 (1979). Rather, plaintiffs contend that the consent decree is illegal because:

A. The local unions were indispensible parties over which Judge Point's court did not have personal jurisdiction, the members of the local unions had a vested property interest in the unit seniority

system in effect under the then existing collective bargaining agreement which was changed by Consent Decree I without an opportunity for a hearing afforded to the local union or its members, and the decree therefore violated the procedural due process guarantees of the Fifth Amendment (Counts I and II).

B. The circumstances at the Sparrows Point plant were such that the consent decree had no rational relationship to the correction of racial wrongs at the Sparrows Point plant, and the plaintiffs and their class have therefore been denied substantive due process rights secured by the Fifth Amendment (Count V).

C. The consent decree is inequitable and was entered into under a mistake of law on the erroneous assumption that the pre-existing unit seniority system was not a bona fide seniority system within

the meaning of Title VII of the Civil Rights Act of 1964. (Count IV).

D. The International, in agreeing to the consent decree, breached its duty of fair representation because (1) it did not submit the proposed decree to the local unions through the Steel Industries Council and (2) it had a conflict of interest in representing the plaintiffs.[2/] (Count III).

Defendants have responded with motions to dismiss which collectively allege that the complaint fails to state a claim upon which relief can be granted (F.R.Civ.P. 12(b)(6)) because:

A. Principles of comity barred the suit.

2/ The "conflict of interest" issue was not raised on the face of the complaint. Plaintiffs have raised this argument in their Memorandum in Opposition to Dismissal (Paper 20 (at 1).

B. The attack upon the consent decree is meritless in that:

1. The local unions are not indispensible parties, 2. There is no proprietory interest in "seniority rights" which gives rise to a right to notice and a hearing under the Due Process Clause. 3. There is no governmental action which would give rise to due process guarantees. 4. There was no breach of any duty of fair representation by the International union. 29 U.S.C. Section 185(a)[3/]

C. The Statute of Limitations bars the suit. Furthermore, the non-Bethlehem

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3/ Plaintiffs' only allegation is that the purported breach of the duty of fair representation invalidated the consent decree and not that plaintiffs are entitled to damages for any breach by the International.

Steel company defendants[4/] argue that this court lacks personal jurisdiction over them (F.R.Civ. P. 12(b)(2)). The defendants' arguments will be addressed one at a time.

I. Comity

Defendants assert that this is a classic case for the application of the doctrine of comity and that this court should not take it upon itself to overturn the consent decree entered by Judge Pointer in Allegheny-Ludlum, supra.

Comity is a doctrine under which judicial discretion is utilized, in appropriate circumstances, to decline to exercise jurisdiction to adjudicate a dispute. Appropriate use of the principles of comity serves to avoid the entry of conflicting and inconsistent judicial decisions by different courts having the same parties

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4/ Armco Steel Corporation does not make this argument because of its ties in Maryland.

or issues before each of them. Additionally, comity serves to conserve judicial resources by avoiding the duplication involved in multiple courts considering the same or similar matters. In addition to achieving the above ends correct exercise of the doctrine results in a display of harmonious respect among courts of equal rank.

In the present case plaintiffs are asking this court to intervene in a matter which was brought before Judge Pointer in Allegheny-Ludlum, supra, and over which he has retained continuing jurisdiction.[5/] More importantly, it asks this court to overturn a complex, consent decree nationwide in scope, which has

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5/ While the consent decree originally anticipated that Judge Pointer would no longer retain jurisdiction after five years from the date of the decree, that court has not, as of this date, entered an order relieving itself of jurisdiction over the case.

been approved by the Fifth Circuit Court of Appeals on numerous occasions (517 F.2d 826 (5th Cir. 1975); 546 F.2d 1249 (5th Cir. 1976); 546 F.2d 1249 (5th Cir. 1977); 553 F.2d 451 (5th Cir. 1977)), and as to decisions upholding which the Supreme Court has denied certiorari at least twice (429 U.S. 944 (1976); 435 U.S. 914). Additionally, at least three other courts have held that the principles of comity prevent them from hearing a collateral attack upon the consent decree. Martini v. Republic Steel Corp., 532 F.2d 1079 (6th Cir. 1976), cert. denied, 429 U.S. 297 (1976); Rodgers v. United States Steel Corp., 70 F.R.D. 639 (W.D. Pa. 1976); Blevins et al v. Armco Steel Corp., et al, C.A. 77-114 (E.D. Ky. Dec. 21, 1977) (unreported).

Further support for application of the comity principle - which would require all attacks upon the consent decree itself

to be brought before Judge Pointer in the District of Alabama- is provided by one of that court's latest opinions in Allegheny-Ludlum dated March 21, 1978. In that opinion Judge Pointer considered a motion to intervene filed by Lundie Blevins, Jr. and other employees of defendant Armco Steel Corporation's plant in Ashland, Kentucky.[6/] In discussing the intervention motion the court drew a distinction between actions directly attacking the consent decree as void, and those actions which alleged that the unique method of implementation of the consent decree at a particular plant has resulted in unlawful discrimination. As to the former the court said,

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6/ Blevins had originally brought a claim to overturn the consent decree in the United States District Court for the Eastern District of Kentucky but that court had dismissed the action on the basis of comity. Blevins et al v. Armco Steel Corp., et al, C.A. 77-114 (E.D. Ky. December 21, 1977) (unreported).

> "To the extent Blevins and his fellow employees were seeking a ruling that entry of the consent decree was void as respects the Ashland plant, their claim was clearly barred - their only forum for such a claim being the court which entered such decree. That is the very situation and ruling in Martini v. Republic Steel Corp., 532 F.2d 1079 (6th Cir. 1976)."
>
> (March 21, 1978 Memorandum and Order at 9, footnote omitted [7/])

Two major arguments (which do not go

7/ In the March 21, 1978 Order, Judge Pointer ordered the parties to show cause why the consent decree should not be amended to make it clear that other courts of competent jurisdiction are not foreclosed from considering actions which allege that implementation of the consent decree at a particular plant results in unlawful discrimination. In a Memorandum Opinion dated December 14, 1978, Judge Pointer concluded that such an amendment to the consent decree was not advisable, but the Memorandum clearly implied that he still held to the opinion that principles of comity should not operate to bar another court from hearing charges that implementation of the consent decree at a particular plant resulted in unlawful discrimination.

into the substance of the consent decree)[8/] exists on the plaintiffs' side in opposition to the application here of the comity doctrine. The first is that the plaintiffs should have a right to choose their forum in bringing this action and not be forced to bring their complaint to Judge Pointer in Alabama. The second

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8/ Plaintiff asserts also that this court should not allow comity to bar this suit because the local unions were not afforded a notice or hearing before the decree was implemented. This argument is, in essence, the "indispensible party" argument in disguise and really addresses substantively why this court should overturn the consent decree as opposed to why this court should put aside the principle of comity and agree to hear the case.

is that Judge Pointer would probably refuse on the ground of excessive delay to allow the plaintiffs to attack the validity vel non of the consent decree (U.S. By Bell, etc. v. Allegheny-Ludlum Industries, Inc., 553 F.2d 451 (5th Cir. 1977) (where the Fifth Circuit affirmed Judge Pointer's denial of a motion as untimely to intervene by a group of steelworkers who sought to void Consent Decree I).[9/]

The short answer to the argument relating to the right of the Plaintiffs to choose the forum is that there is no such absolute right, particularly where

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9/ See also, Judge Pointer's March 21, 1978 Memorandum Opinion at 9, fn. 10, in which he intimates that Blevins' claim, if intervention were allowed, would be rejected both on the merits and as untimely".

there might be a potential for one co-equal court to be called upon to in effect reverse the judgment of another court. Cf. Ellicott Machine Corp. v. Modern Welding Co., Inc., 502 F.2d 178 (4th Cir. 1974).

As to the argument that Judge Pointer could possibly refuse to allow the plaintiffs in this case to attack collaterally in his court the consent decree, there is a similarly short answer. The factors relating to timeliness of an attack on the validity vel non of the consent decree are the same before this court as they would be before Judge Pointer. (See discussion of timeliness, infra). It would be indeed paradoxical to reward plaintiffs for their late filing by entertaining their complaint on that basis in this court.

Summarizing, appropriate application of the doctrine of comity bars favorable

consideration by this court of an attempt by the plaintiffs to overturn the consent decree entered by Judge Pointer. However, because the court believes that plaintiffs' suit is, in addition, defective on the merits, the court will address the substantive issues raised in the motions to dismiss.

II. Merits of the Complaint

A. Indispensible Party Theory

Counts I and II of the complaint basically allege that the consent decree is void because the local unions were necessary parties and a judgment without joining them is void as it applies to them. In other words, plaintiffs assert that the locals were indispensible under Rule 19, F.R.Civ. P., and that Judge Pointer should have dismissed the action because the Alabama District Court did not have personal jurisdiction over the geographically widely disbursed

locals.[10/]

Plaintiffs assert that the International did not have the authority by itself to bind the locals or its members to the consent decree. As authority for this proposition, plaintiffs cite the "Union

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10/ See, 3A Moore's F.F. Section 19.07-2 (o) at 19-157. "Although an absent person may be indispensible, if the action, nevertheless, is not dismissed and the trial court proceeds to a judgment, that judgment is not subject to collateral attack by a party over whom the court had jurisdiction; but judgment is not binding upon a person over whom the court did not have jurisdiction, unless he is privity with or represented by a party before the court. (emphasis added, footnote omitted).

Constitution, By-Laws and past practices."[11] It is the contention of the plaintiffs that the provisions of the consent decree should have been submitted to the Steel Industries Council (S.I.C.)[12] for approval prior to the approval of the consent decree by the International.[13] "Resolution No. 24"[14] delegated the International's authority

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11/ Plaintiff's Reply Memorandum at 10 (Paper No. 20).

12/ The Steel Industries Council is an organization whose membership consist of local union presidents from plants in the basic steel industry. Resolution 24 was adopted at the 1966 International Convention to delegate the authority to reject or ratify collective bargaining agreements to the S.I.C. Aikens v. Abel, 373 F.Supp. 425 (W.D. Pa. 1974).

13/ Plaintiff's "Memorandum in Opposition to Dismissal" at 15.

14/ See footnote 12, supra.

to ratify or reject proposed collective bargaining agreements to the S.I.C., and, therefore, so the plaintiffs say, the International no longer possess the authority to agree to a consent decree which changed any aspect of an existing collective bargaining agreement. Plaintiffs further argue that the fact that the S.I.C. later approved the provisions of the consent decree and incorporated them into the next collective bargaining agreement, which agreement became effective at approximately the same time as the consent decree, is of no importance because the adoption of the consent decree amounted to a "Shotgun Marriage" as a result of which the S.I.C. had no choice but to adopt the judicially mandated provisions which had already been agreed to by the International.

Defendants assert that Resolution 24

does not apply to consent decrees and that even if it did apply, a "Shotgun Marriage" did not occur but rather that the S.I.C. freely, openly and wholeheartedly adopted the consent decree's provisions, particularly the change to plantwide seniority. Lastly, Defendants contend that, assuming the International's internal procedures were not correctly followed, the failure to follow the internal procedures did not alter the authority of the International to enter into the consent decree under Article XVII of the International's Constitution.15/

15/ ARTICLE XVII
Contracts
"Section 1. The International Union sall be the contracting party in all collective bargaining agreements and all such agreements shall be signed by the International Officers."

The Court rejects the arguments of the plaintiffs on this point. First of all, there is a real question as to whether the individual plaintiffs, who have not alleged that they are members of the S.I.C. or acting on behalf of the local union, have standing to object to failure to refer the matter for prior S.I.C. approval.[16/] Secondly, even if the failure to submit the consent decree provisions to the S.I.C. amounted to a

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16/ This case is unlike the cases cited by the plaintiff wherein the union constituion does not allow the International to enter into a collective bargaining agreement until the membership of the union had approved all major propositions filed therein. See, Christopher v. Safeway Stores, 476 F.Supp. 450 (E.D. Texas 1979).

violation of internal union procedures (See Aikens v. Abel, 373 F.Supp. 425 (W.D. Pa. 1974)), it does not lessen the inherent authority of the International to bind the union into such an agreement. Thirdly, while Resolution 24 delegates to the S.I.C. the authority to ratify or reject proposed collective bargaining agreements, it does not purport to delegate the inherent power of the International, through its officers, to approve a consent decree which has some effect on the collective bargaining agreement.[17/]

17/ To conclude that the International did not have the authority to enter into the consent decree but instead had to submit it to the S.I.C. for approval would produce the absurd result that the International would be powerless to cease unlawful discrimination unless the S.I.C. voted or a court mandated it. However, it is the International and not the S.I.C. which would be held liable for any back-pay relief.

Fourthly, even if plaintiffs were correct that the subsequent ratification of the consent decree provisions by the S.I.C. while under the duress of a judicial mandate might not constitute a voluntary adoption of them, the failure of the S.I.C., or any substantial proportion of its members, to move to set aside the decree indicates at least a tacit approval of the consent decree by the S.I.C. on the basis of which the dependents have subsequently acted. Lastly, even assuming that approval of the S.I.C. was necessary before the International approves a consent decree, the locals did not need to be joined in the suit in Alabama, because a majority vote of the S.I.C., and not that of each individual local, would have been necessary to

approve the decree.[18/]

The local unions were not indispensible parties to the Alabama litigation, and the consent decree is not invalid for the failure to join them.

B. Seniority

Defendants assert that Plaintiffs have no standing to raise their Fifth Amendment claim (Counts I, IV and V) because they have no protected "property interest" in seniority rights which gives rise to any due process right. Plaintiffs have presented cases which they contend show that seniority is a "vested property right" entitled to due process protection.

18/ See, United States v. T.I.M.E. - D.C., 517 F.2d 299, 310 (5th Cir. 1975), aff'd. in part and rev'd. in part on other grounds, sub. nom., 431 U.S. 324 (1977); United States v. Navajo Freight Lines, 525 F.2d 1318, 1322 (9th Cir. 1975).

After asserting that there is such a property right, plaintiffs conclude that the seniority system in effect at the Sparrows Point plant was bona fide under Teamsters v. United States, 431 U.S. 324 (1977), and that therefore the Alabama District Court was without authority to enforce a consent decree which changed such a lawful seniority system.[20/]

Any property interest that is created in seniority is a creature of the collective bargaining agreement entered into between the employer and the union.

20/ Teamsters, supra was not handed down until several years after the consent decree was prior to Teamsters, many lower courts had held that a seniority system which perpetuated past discrimination was not bona fide within the meaning of Section 703(h) of Title VII (42 U.S.C. Section 2000e-2(h)). See, Teamster v. United States, supra, 431 U.S. at 378-379. (Marshall, J. dissenting); and cases cited therein.

If the union and employer agree to abolish seniority totally from their collective bargaining agreement, there is no doubt that they could do so without abridging the individual rights of the union members.

Certainly, seniority rights which are derived from collective bargaining agreements are valuable property rights in the same sense that welfare benefits are valuable property rights to a welfare recipient, Goldberg v. Kelly, 397 U.S. 254 (1970). This type of "property" in which the "right" is held, however, is significantly different from a tangible res such as a diamond or a tract of land. This type of property is really "quasi property" and is itself subject to change. For instance, while in Goldberg, supra, the Supreme Court held that an individual could not have welfare benefits cut off without the due process safeguards of

notice and a hearing, this does not mean that the legislature could not abolish welfare altogether without affording notice and hearings to each welfare recipient. Similarly, while an individual may have a right to seniority benefits granted by a collective bargaining agreement, this does not mean that the seniority rights cannot be altered by a change in the collective bargaining agreement. Any rights of seniority are derived from the collective bargaining agreement and subject to modification by that agreement. United States vs. Bethlehem Steel Corp., 446 F.2d 652, 663 (2nd Cir. 1971). This line of reasoning was affirmed by the Supreme Court in Franks v. Bowman Transportation Co., 424 U.S. 747, 778-779 (1976).

Within this framework plaintiffs next assert that the seniority rights cannot be changed by judicially approved consent decree which purports to correct unlawful

discrimination under Title VII, when in fact there was no unlawful discrimination under the Supreme Court's holding in Teamsters, supra.[21/] This issue has been squarely addressed by Judge Pointer in an unpublished opinion dated March 21, 1978[22/] in which he stated:

> "To the extent the movants would read Teamsters as precluding a change in a seniority system which satisifes the requirements of 42 U.S.C. Section 2000e-2(h), they are mistaken. Rather, its basic holdings in this

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21/ These "changed circumstances" also form the basis of Count IV and the reasoning in this subsection would apply equally to that count.

22/ A copy of which is attached as Appendix A to the "Reply Memorandum for the Government Defendants" (Paper No. 23).

respect were that such a system does not violate Title VII even though, because of other circumstances, its effects are discriminatory and that, accordingly, the law does not require the parties to change such a system except to the extent necessary as a remedy for other practices which do violate Title VII. Nothing in Teamsters, however, suggests that the parties to a collective bargaining agreement would be prevented from changing that agreement, whether or not those changes were required by law. Indeed, in the prior terms of court, the Supreme Court had written:

> 'The Court has also held that a collective bargaining agreement may go further, enchancing the seniority status of certain employees for purposes of furthering public policy interests beyond what is required by statute, even though this will to some extent be detrimental to the expectation acquired by other employees under the previous seniority agreement. Ford Motor Co. v. Huffman, 345 U.S.

> 330 (1953). And the ability of the union and employer voluntarily to modify the seniority system to the end of ameliorating the effects of past racial discrimination, and national policy of the "highest priority", is certainly no less than in other areas of public policy interests. Franks v. Bowman Transporation Co., 424 U.S. 747, 778-79 (1976).

The essence of Consent Decree I is a collective bargaining agreement between the union and the companies. Its basic nature is not changed by reason of the facts that negotiations were conducted with the objective of avoiding potential claims by federal governmental agencies of discrimination and that the agreement became embodied in order to effectuate and implement the release of such claims, in a court decree. The conversion to plant-wide seniority as a part of the collective bargaining process -- a matter reaffirmed by the union after Teamsters -- does not, in and of itself, constitute a violation of law; and this is no less

> true because the courts in the case sub judice, have given their imprimatur to that change. (at paragraph 3-4).

This court fully concurs with Judge Pointer's opinion and, accordingly, plaintiffs' complaint has failed to state a claim upon which relief can be granted in Counts I, IV and V of the complaint.

C. Duty of Fair Representation

Count II of the complaint alleges that the union breached its duty of fair representation in that (1) the International did not submit the consent decree to the locals and their members for approval and (2) the International had a conflict of interest in that it stood potentially liable for back-pay damages if plaintiffs succeeded in Allegheny-Ludlum, supra, and that therefore it had a conflict of interest in representing the locals and the members

of the union.[23/] Stripped to its essence, plaintiffs' first argument is that the International should have submitted the proposed consent decree to its members for approval and that in failing to do so the International acted in an arbitrary and capricious manner, thereby breaching its duty of fair representation to its members.

The International argues that Count III fails to state a claim upon which relief can be granted, because there is no duty or requirement in the Internationl's Constitution, By-Laws or Resolutions which would require consent decrees (or collective bargaining agreements) to be submitted to the locals or individual members for their approval.

23/ Seefootnote 2, supra.

The International appears to be correct in its contention. See, Aikens vs. Abel, 373 F.Supp. 425, 432-433 (W.D. Pa. 1974) and the Indispensible Party Section of this opinion, part II(a), supra.

Absent an arguable claim of arbitrariness or bad faith, Count III of the complaint must be dismissed. See, Vaca v. Sipes, 386 U.S. 171 (1967); Lusk v. Eastern Products Corp., 427 F.2d 705 (4th Cir. 1970). The plaintiffs allege no bad faith or fraud, but rather assert that the failure to submit the consent decree to the locals was arbitrary.[24/] The Court has already concluded that the

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24/ "Plaintiffs' Third Response in Opposition to Dismissal (Paper No. 26) at 6, lists what plaintiffs consider to be four "acts or omissions" which constitute a violation of the duty of fair representation. All four reasons are discussed and dismissed as legally frivolous at various points in this opinion.

Union's Constitution, By-Laws, and other governing rules did not require that the consent decree be submitted to the locals. It cannot be legally arbitrary to fail to do something which is not required.

Plaintiffs' conflict of interest theory is without merit. The logical result of plaintiffs' argument is that an International union would be forbidden from representing its members every time the International were sued. The sole act of which the Union stood accused in Allegheny-Ludlum was its role in negotiating the very seniority status which plaintiffs now wish to reclaim. In agreeing to modify the system, the International was hardly requiring "others to pay its debts". More importantly, the plaintiffs erroneously speak of the International and its treasury as an abstract entity separate

and apart from its locals and members. In reality, the International is composed of elected representatives of the locals and its members and the Union treasury is merely the collective dues of its members. A conception of the International as having a conflict of interests in agreeing to change seniority rights assumes that the International's officers had a personal stake in the International's treasury which would be affected by back-pay liability. As an elected representative of its members, the officers would stand to gain little from a course of action which saved the Union treasury but would would be unsupported by the locals or its members. Plaintiffs conflict of interest argument is meritless both logically and legally.

To the extent that Count III attempts to assert a claim under Section 301 of the Labor Management Relations Act, 29 U.S.C. Section 141 et seq., the Count is defective. It alleges a breach of contract by the International, the contract being "the Constitution, By-Laws and other governing documents of the Union. In Trail v. International Brotherhood of Teamsters, 542 F.2d 961, 966 (6th Cir. 1976), the Sixth Circuit held that suit by an individual against an International Union did not constitute a suit brought for violation of "contracts between such labor organizations" under Section

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25/ Section 301(a) provides:

"Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court in the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties. (emphasis added). 29 U.S.C. Sec. 185(a).

301.[25/] See also, Hotel & Restaurant Employees Local 400 v. Svacek, 431 F.2d 705 (9th Cir. 1970).

Similarly, in the present case a local union is not suing the International but rather individual members are suing the International. Individual members do not by themselves constitute a "labor organization" as required by the language of Section 301.

For all these reasons Count III of the complaint will be dismissed for failure to state a claim upon which relief can be granted.

D. Statute of Limitations

Counts II and V apparently allege Constitutional torts. A three year statute of limitations applies to these counts under Maryland law. Md. Ann. Code, Cts. & Jud. Proc. Art., 5-101; Johnson vs. Railway Express Agency, Inc., 421 U.S. 454, 462 (1975); Regan v.

Sullivan, 557 F.2d 303 (2nd Cir. 1977). Since Consent Decree I was entered on April 12, 1974 and its seniority provisions were expressly made a part of the basic labor agreement on August 1, 1974, the cause of action, if any, asserted by the plaintiftfs accrued on August 1, 1977 at the latest. This suit was not filed until November 17, 1977, however. Therefore, Counts II and V are time barred.

Similarly, the denial of fair representation Count III, is time barred. International Union, U.A.W. v. Hoosier Cardinal Corporation, 383 U.S. 696, 704-5 (1966).

III. Conclusion

The motions of the defendants to dismiss must be granted with prejudice.

It is SO ORDERED this 31st day of July, 1980.

James R. Miller, Jr.
United States District Judge

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 80-1584

JAMES C. GOINS,
et al
Appellants

vs.

BETHLEHEM STEEL
CORPORATION, et al

Appellees

Appeal from the United States District Court for the District of Maryland, at Baltimore. James R. Miller, Jr., District Judge.

Argued: May 5, 1981 Decided: August 13, 1981

Before FIELD, Senior Circuit Judge, SPROUSE and ERVIN, Circuit Judges.

SPROUSE, Circuit Judge:

The Appellants, all members of the United Steelworkers of America, are employees of the Sparrows Point, Maryland

plant of the Bethlehem Steel Corporation. The appeal from a judgment of the Maryland district court dismissing their complaint seeking nullification of a consent decree entered by the federal district court for the Northern District of Alabama.

In 1974 the Equal Employment Opportunity Commission and the United States brought an employment discrimination action in the Alabama District Court against the United Steelworkers of America and nine major steel companies, including Bethlehem. The government sought enforcement throughout the steel industry of the prohibition against discrimination contained in Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e, et seq., and Exec. Order 11246 3 C.F.R. 339 (1964-1965 Comp.). After intense negotiations, that litigation was

settled, and the Northern Alabama district court entered two extensive consent decrees. United States vs. Allegheny-Ludlum Industries, Inc., 63 F.R.D. 1 (N.D. Ala. 1974), aff'd., 517 F.2d 826 (5th Cir. 1975), cert. denied, 425 U.S. 944 (1976).[1/]

A principal bulwark of one of the consent decrees was the substitution of a plant-wide seniority system for the pre-existing unit-wide seniority provisions of the extant collective bargaining agreements. Thus, an employee's eligibility for job vacancies effected by seniority was no longer determined, as it had been, by looking merely to the length

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[1/] The terms of the consent decree are published in the Fair Empl. Prac. Manual (BNA) 431:125 (1974).

of the employee's service in his or her present unit. Instead, under the decree, the measure of of an employee's seniority is the length of his or her continuous service in the plant as a whole. The complaint in Allegheny-Ludlum had alleged that unit-wide seniority perpetuated the effects of allegedly discriminatory practices in job assignments, promotions, and transfers. Thus, the decree's implementation of plant-wide seniority was designed to facilitate the movement of minority and female employees into preferred units and to permit their advancement in these units on the basis of their overall plant service. The plant-wide seniority rules have since been made a part of the labor agreement between Bethlehem and the Union, and the decree itself had been upheld by the Court of Appeals for the Fifth Circuit on

numerous occasions.[2/]

The Plaintiffs filed this putative class action in the federal district court for the district of Maryland, naming as Defendants all parties to the Allegheny-Ludlum consent decree. Plaintiffs sought a declaration that the consent decree is unlawful and an order requiring the defendants to recognize

2/ In addition to the opinions reported in the initial Allegheny-Ludlum litigation itself, 517 F.2d 826 (5th Cir. 1975); cert. denied, 425 U.S. 944 (1976); 546 F.2d 1249 (5th Cir. 1977); and 553 F.2d 451 (5th Cir. 1977), cert. denied, 435 U.S. 914 (1978), several per curiam decisions without opinion of the Fith Circuit have rebuffed employees' efforts to modify or void the consent decree. United States vs. Allegheny-Ludlum Industries, Inc., 625 F.2d 1013 (5th Cir. 1980); EEOC V. UNITED STATES TEEL CORP., |)& F.2d 1004 (5th Cir. 1979).

unit-wide seniority, in accordance with the labor agreement in effect prior to the 1974 decree, rather than the plant-wide seniority provisions of the decree.

Underlying this suit is the recent recession in the steel industry and, particularly, according to the plaintiffs, at Bethlehem's Sparrows Point plant. The plaintiffs allege that the recession has resulted in a greater incidence of layoffs among the plaintiffs and their class under the decree's plant-wide seniority system than they would have experienced under the old unit-wide seniority system. They urge that any discriminatory practices addressed by the decree had been eliminated at the Sparrows Point plant long before the decree was entered and, essentially, that the reforms implemented by the decree were not needed at Sparrows Point.

Plaintiffs do not assert that the Allegheny-Ludlum decree has in any way resulted in unlawful discrimination against them. Rather, they attack the judgment of the Northern Alabama district court on the grounds (1) that they were "necessary parties" to the Allegheny-Ludlum litigation but received no notice and had no hearing prior to the entry of the consent decree; (2) that the consent decree should have been ratified by a vote among the local affiliates of the United Steelworkers International' (3) that in failing to afford local affiliates an opportunity to participate in the negotiations preceding the decree the United Steelworkers International breached its duty of fair representation; (4) that the Alabama district court and the parties to the consent decree failed to recognize that the unit-wide seniority

system in effect at the Sparrows Point plant prior to the decree was bona fide and not discriminatory; and (5) that the consent decree "bore no responsible or rational basis to any wrongs" at the Sparrows Point plant.

In a well-reasoned opinion, the Maryland district court held that the doctrine of comity forbade this collateral attack upon the judgment of the Northern Alabama district court and that, in any event, the plaintiffs' claims were without merit. We agree that basic considerations of comity bar this attempt to "appeal from one district judge to another". Ellicott Machine Corp. v. Modern Welding Co., 502 F.2d 178, 181 (4th Cir. 1974).

There is no question that the Northern Alabama district court in Allegheny-Ludlum had subject matter jurisdiction over the controversy which lead to the

decree and, by reason their voluntary appearances, personal jurisdiction over each of the defendants in that case. No more is required to make the judgment of the Northern Alabama district court conclusive, subject to attack only by motion in that court or by appeal to the United States Court of Appeals for the Fifth Circuit. Martini v. Repbulic Steel Corp., 532 F.2d 1079, 1081 (6th Cir. 1976); Lavasek v. White, 339 F.2d 861, 863 (10th Cir. 1965). Obviously, neither this court nor the Maryland federal district court sit to review the judgments of the United States district court for the Northern District of Alabama.

For these reasons, and for those ably stated by the district court, Goins v. Bethlehem Steel Corp., No. M-77-1905 (D. Md. July 31k, 1980), we affirm.

AFFIRMED.

APPENDIX C

Resolution No. 24-BARGAINING PROCEDURES

President I.W. Abel, at the International Executive Board meeting on October 22, 1965, appointed a special committee, under the Chairmanship of Vice President Joseph P. Molony, to study our collective bargaining procedures and to explore possible methods of improving them.

Many meetings were held. The Committee sought and received valuable information and advice from the membership, local union officers, staff and District Directors. The Committee carefully reviewed the conduct and proceedings of the International Wage Policy Committee and the various Industry Conferences which function within our jurisdiction. The Committee also studied and evaluated the bargaining procedures of other unions, and our participation in

conferences called by the Industrial Union Department of the AFL-CIO.

The Committee reported its findings to the International Executive Board on September 13, 1966, and the Board, after careful deliberation, has made certain recommendations to this Convention for its consideration.

We recognize at the outset that there were substantial areas of dissatisfaction with our bargaining procedures. There is a feeling among the membership in Basic Steel that their representation on the International Wage Policy Committee has been, at times, overshadowed, and that they have not played a meaningful role in deciding their own destiny. The Basic Steel membership also has expressed dissatisfaction at the failure, in some instances, of our current procedures to obtain long-deferred benefits and

complete settlement of local issues.

Outside Basic Steel, certain of our members are concerned that their interests have been submerged in favor of the Basic Steel membership. We note that, in the past 10 years, the relative numbers of our members working in the various industries in our jurisdiction have changed significantly. While at one time 60 per cent of our membership worked in the Basic Steel Industry, today only 40 per cent of our membership is employed in that Industry. The majority of our members are now employed in aluminum, can manufacturing, nonferrous, foundry, fabricating and related operations. With this employment shift within our membership, there has come from our members outside Basic Steel a request for greater recognition of their identity and their problems.

We believe that the following changes in procedure are addressed to the concerns of our members both in and outside of Basic Steel, and will bring about greater involvement and participation by the membership.

I

The International Wage Policy Committee has rendered invaluable service to this Union for the past 22 years, serving as a forum for debate and the enunciation of policy governing all of our membership. The International Wage Policy Committee therefore shall be continued as part of our collective bargaining procedures. The International Wage Policy Committee shall examine and evaluate all resolutions and proposals referred to it by the International Convention, by the International Executive Board, and the International President.

It shall have authority to initiate and formulate wage policy for the entire membership of the United Steelworkers of America.

II

The International Executive Board shall establish Industry Conferences in the following industries:

Basic Steel Industry

Nonferrous Industry

Aluminum Industry

Can Manufacturing Industry

Industry Conferences shall be composed of representatives of local unions within the Industry, together with such District Directors and presiding officers as may be designated by the International President.

Industry Conferences shall have the responsibility, within their Industry, of implementing the National Wage Policy of

the United Steelworkers of America.

Industry Conferences shall have authority to reject or ratify contracts and, in the event of a strike, to approve the contract settlement terminating the strike.

Industry Conferences shall have authority to recommend strikes, subject to the approval of the membership involved. We believe that ascertaining the wishes of the membership before a strike is fundamental to a democratic union. The rules and regulations for obtaining such strike approval shall be formulated by the International Executive Board.

In the event the membership involved authorizes a strike, the International Executive Board shall set the date for the strike.

The International Execute Board shall mandate the continuation of Industry Conferences in the following industries:

Valves and Fittings-Pumps and Compressors

Steel Foundries

Grey Iron and Malleable Iron Foundries

Construction Machinery and Equipment

These Conferences have functioned successfully and are invaluable to the membership. However, we do not, as yet, have the numerical strength or degree of coordination in these industries which we enjoy in Steel, Aluminum, Can Manufacturing, or the Nonferrous Industry. Therefore, the responsibility and authority vested in the steel, aluminum, can manufacturing and nonferrous Conferences will not be accorded to these

Conferences, pending study and decision by the International Executive Board.

The International Executive Board will from time to time establish Industry Conferences for other industries as appropriate.

The International Executive Board shall be authorized to formulate additional rules and regulations for all Industry Conferences and such modifications as are necessary to meet the problems of each of these industries and special problems in the Canadian steel, aluminum, can manufacturing and nonferrous industries in conformity with the mandate of the conventions and in conformity with the Constitution.

Opposition

Office - Supreme Court, U.S.
FILED
JAN 29 1982
ALEXANDER L. STEVAS,
CLERK

No. 81-892

In the Supreme Court of the United States

OCTOBER TERM, 1981

JAMES C. GOINS, ET AL., PETITIONERS

v.

BETHLEHEM STEEL CORPORATION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

REX E. LEE
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1. Petitioners, employees and local union members at a Bethlehem Steel plant, brought this action in the United States District Court for the District of Maryland. They sought a declaration that the seniority provisions of a consent decree entered by the United States District Court for the District of Alabama were unlawful. That decree had settled an employment discrimination suit filed by the United States and the Equal Employment Opportunity Commission against Bethlehem Steel, other major steel companies, and the United Steelworkers of America (USW). See *United States* v. *Allegheny-Ludlum Industries, Inc.*, 63 F.R.D. 1 (N.D. Ala. 1974), aff'd, 517 F. 2d 826 (5th Cir. 1975), cert. denied, 425 U.S. 944 (1976).

Petitioners claimed that the consent decree was void because: (i) local unions of the USW over which the United States District Court for the Northern District of Alabama did not have jurisdiction were indispensable parties to the litigation that culminated in the consent decree; (ii) the consent decree violated petitioners' rights under the Due Process Clause of the Fifth Amendment because it had no rational relationship to the correction of racial discrimination at petitioners' plant; (iii) the decree was based on an interpretation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, that was subsequently rejected by *International Brotherhood of Teamsters* v. *United States*, 431 U.S. 324 (1977); and (iv) the USW breached its duty of fair representation by not complying with its internal rules, which required that the proposed consent decree be ratified by a council of local union presidents before it was accepted (Pet. App. A1-A5, A16-A17 & n.12). Petitioners did not contend that the consent decree "constitute[d] reverse [racial] discrimination" against them (*id.* at A3).

The district court dismissed the complaint, holding that comity required petitioners' suit to be brought in the United States District Court for the Northern District of Alabama (Pet. App. A7-A15). The court then added: "because the court believes that [petitioners'] suit is, in addition, defective *on the merits*, the court will address the substantive issues * * *" (*id.* at A15; emphasis in original). The court rejected each of petitioners' contentions on the merits. It held that the USW did not violate its internal procedures by agreeing to the decree without obtaining the prior consent of the council of local union presidents (*id.* at A20-A21), and that for this reason the USW had not breached its duty of fair representation (*id.* at A32-A33). In any event, the court ruled, the council had tacitly assented to the decree, and however great the role assigned to the council by USW rules, the local unions themselves were not indispensable

parties (*id.* at A21-A23). The district court rejected petitioners' due process claims on the ground that their seniority rights were "derived from the collective bargaining agreement and subject to modification by that agreement" (*id.* at A26), and that the consent decree, which the USW had authority to execute, modified the collective bargaining agreement (see *id.* at A21). The district court also rejected the suggestion that *Teamsters* required the consent decree to be abrogated, noting that parties are free to agree to changes in a seniority system even if those changes are not legally required (*id.* at A28). Finally, the district court held that the applicable statutes of limitations barred both petitioners' constitutional claims and their claim that the USW had violated its duty of fair representation (*id.* at A36-A37).

The court of appeals affirmed. It agreed with the district court that since the court which entered the consent decree had subject matter jurisdiction and personal jurisdiction over the parties to the decree, "basic considerations of comity bar [petitioners'] attempt to 'appeal from one district judge to another' " (Pet. App. A45, quoting *Ellicott Machine Corp.* v. *Modern Welding Co.*, 502 F. 2d 178, 181 (4th Cir. 1974)). The court of appeals also affirmed on the basis of the other "reasons * * * ably stated by the district court" (Pet. App. A46).

2. The only questions presented by the petition pertain to the court of appeals' ruling that comity barred petitioners' challenge (see Pet. 3). See generally *Kerotest Manufacturing Co.* v. *C-O Two Fire Equipment Co.*, 342 U.S. 180, 183-184 (1952). The judgment of the court of appeals, however, also rested on the alternative grounds, elaborated by the district court, that petitioners' claims were without merit. While petitioners appear to discuss, in a general way, this alternative basis of the decision below (see Pet. 38-57), a

challenge to it is not fairly comprised in the questions presented.[1] See Rule 21.1(a) of this Court's Rules. Accordingly, review by this Court of the questions presented in the petition could not affect the judgment of the court of appeals in a manner favorable to petitioners.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

JANUARY 1982

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[1]If the Court so requests, we will address the substance of the issues decided by the courts below.

DOJ-1982-01